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House Bill _____
By _____

Senate No. SB0453
By Koella

AN ACT to amend Tennessee Code Annotated, Title 66, Chapter 32, to enact the "Tennessee Vacation Club Act of 1995".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Vacation Club Act of 1995."

SECTION 2. Legislative Intent. The purpose of this Act is to recognize that the sale and promotion of vacation clubs is an emerging, dynamic segment of the international tourism industry; that this segment of the tourism industry continues to grow, both in volume of sales and in complexity and variety of product structure; and that a uniform and consistent method of regulation is necessary in order to safeguard the state's consumers and the state's economic well-being. It is the intent of the General Assembly that this Act be interpreted broadly in order to enhance the quality of vacation clubs offered and sold in this state and to protect consumers who purchase vacation club interests.

SECTION 3. Application. This Act applies only to sellers of vacation club interests who offer for disposition vacation club interests to the general public in Tennessee. For purposes of this section, an offer shall be considered to be made in this State only if the offer: (1) originates

from this State; or (2) is directed by the offeror into this State and is received at the place to which it is directed.

SECTION 4. Exemptions. This Act shall not apply to any of the following:

(1) An offer or disposition other than in the ordinary course of business by any holder of a purchase money lien, including any assignee thereof, who acquires a vacation club interest as a result of an owner's default with respect to his purchase money financing obligations, whether such vacation club interest is acquired by foreclosure, the acceptance of a deed in lieu thereof, or other legal or equitable means;

(2) A gratuitous disposition;

(3) A disposition by devise, descent, or distribution or a disposition to an inter vivos trust;

(4) An offer or disposition of a vacation club interest by an owner other than a developer, unless such owner makes such offer and disposition in the ordinary course of its business; or

(5) An offer or disposition of a vacation club interest that is part of a duly registered vacation club pursuant to the laws of a state with the same or more stringent requirements as this State.

SECTION 5. Tennessee Code Annotated, Section 66-32-102, Subsection (22) is amended by adding the following language after the comma following the words "club membership":

vacation club interest,

SECTION 6. Tennessee Code Annotated, Title 66, Chapter 32, is amended by adding the following language as a new, appropriately designated section.

Section 66-32-____. "Vacation club interest" means and includes the following interests in a vacation club:

(1) A "specific time-share interest," which is a right to use a specific accommodation or accommodations, and facilities at one component site of a vacation club, for the remaining term of the vacation club in the event that the reservation system is terminated for any reason prior to the expiration of the term of the vacation club, together with use rights in the other accommodations and facilities of the vacation club created by or acquired through the reservation system; provided that there is a one-to-one purchaser to accommodation ratio for each time- share interval, which entitles a particular owner who complies fully with the reservation system's rules and regulations to reserve, use and occupy a protected accommodation of the vacation club completely independent of any other owner's failure for reason to reserve, use, or occupy an accommodation of the vacation club; and

(2) A "nonspecific time-share interest," which is a right to use all of the accommodations and facilities of a vacation club created by or acquired through the reservation system, but including no specific right to use any particular accommodations or facilities for the remaining term of the vacation club in the event that the reservation system is terminated for any reason prior to the expiration of the term of the vacation club; provided that there is a one-to-one purchaser to accommodation ratio for each time- share interval, which entitles a particular owner who complies fully with the reservation system's rules and regulations to reserve, use and occupy a protected accommodation of the vacation club completely independent of any other owner's failure for reason to reserve, use, or occupy an accommodation of the vacation club.

SECTION 7. Tennessee Code Annotated, Section 66-32-102, is hereby amended by adding the following language as new, appropriately designated subsections:

(24) "Component site" means a specific geographic site at which certain time-share accommodations and facilities are located. If permitted under applicable law, separate phases that are operated as a single development in a particular geographic location and under common management shall be deemed a single component site.

(25) "Reservation system" means the method, arrangement, or procedure by which the owners of vacation club interests are required to compete with other owners of vacation club interests in the same vacation club in order to reserve the use and occupancy of an accommodation of the vacation club for one or more use periods, regardless of whether such reservation system is operated and maintained by the vacation club managing entity, an exchange company, or any other person. In the event that mandatory use of an exchange program is an owner's principal means of obtaining the right to use and occupy a vacation club's accommodations, such arrangement shall be deemed a reservation system for purposes of this act.

(26) "Vacation club" means any system or program with respect to which a purchaser obtains, by any means, a recurring right to use and occupy accommodations and facilities, if any, in more than one component site through the mandatory use of a reservation system, whether or not the purchaser's use and occupancy right is coupled with an interest in real property.

(27) "Vacation club documents" means and includes the one or more documents or instruments, by whatever name denominated, creating or governing a vacation club and the disposition of vacation club interests therein. The term "vacation club documents" is intended to be broadly construed to incorporate all terms and conditions of the purchase of a vacation club interest, the incorporation of accommodations and facilities located at component sites into the vacation club, the management and operation of the vacation club's component sites, and the

management and operation of the reservation system, including but not limited to the reservation system's rules and regulations.

SECTION 8. Tennessee Code Annotated Title, 66, Chapter 32, is hereby amended by adding the following language as a new, appropriately designated section:

Section 66-32-____ A vacation club's reservation system shall be subject to the requirements for subordination or other financial assurances set forth in this act. Prior to offering vacation club interests, a developer shall create or provide a reservation system, including all appropriate computer hardware and software which is necessary to satisfy owners' reasonable expectations concerning the use and occupancy of the vacation club's accommodations, based upon the developer's representations and the terms and conditions of the vacation club documents, and establish rules and regulations for its operation. In establishing such rules and regulations, the developer shall take into account the anticipated demand for use and occupancy of the vacation club's accommodations in view of the size and type of each accommodation, each component site location, the time of year, the projected common expenses of the vacation club from year to year, and all other relevant factors, and shall use its good faith and best efforts, based upon all evidence reasonably available to the developer under the circumstances, to maximize the collective opportunities for all of the owners of vacation club interests to use and occupy the vacation club's accommodations.

(1) The person(s) authorized by the vacation club documents to make additions or substitutions of accommodations to the vacation club, pursuant to this act, shall owe a fiduciary duty to each owner of a vacation club interest to act in the collective best interests of all such owners in connection with any such addition or substitution and to adhere to the demand balancing standard set forth above in ascertaining the desirability of any proposed addition or substitution and

the anticipated impact thereof upon the practical ability of owners to reserve, use, and occupy the vacation club's accommodations.

(2) Prior to offering any vacation club interest in a vacation club, a developer shall provide to the commission satisfactory evidence of the existence of the vacation club's reservation system and shall certify to the commission that such reservation system is fully operative.

(3) Any agreement between a vacation club and a reservation system provider must state that, following a termination of the provider's contract by either party, the reservation system provider will, in the vacation club managing entity's sole discretion, either:

(a) Permit the vacation club to utilize the reservation system for a transition period of up to nine (9) months in the same manner and at the same cost as the vacation club utilized the reservation system prior to the termination in order to afford the vacation club managing entity a reasonable opportunity to obtain a new reservation system and arrange for the transfer of all relevant data from the old reservation system to the new reservation system as described in subsection (b) below; or

(b) Promptly transfer to the vacation club managing entity all relevant data contained in the reservation system, including but not limited to the names, addresses, and reservation status of accommodations at the vacation club's component sites, the names and addresses of all owners, all outstanding confirmed reservations and reservation requests, and such other owner and component site records and information as is sufficient, in the reasonable discretion of the vacation club managing entity, to permit the uninterrupted operation and administration of the vacation club for the collective benefit of owners of vacation club interests

therein. All reasonable costs incurred by the reservation system provider in effecting such transfer shall be reimbursed thereto and shall constitute common expenses of the vacation club.

SECTION 9. Tennessee Code Annotated Title, 66, Chapter 32, is hereby amended by adding the following language as a new, appropriately designated section.

Section 66-32-____. A developer of a vacation club interest shall in all respects be subject to the authority of the commission and any rules and regulations promulgated by the commission. Unless specifically exempted, a developer of a vacation club interest may not offer or dispose of a vacation club interest unless it is registered with the commission under Section 66-32-122, as amended, and pays any fee required by Section 66-32-122, as amended. Prior to offering any vacation club intervals in a vacation club, a developer shall provide the commission:

(1) Satisfactory evidence of the existence of the time-share intervals that are part of the vacation club;

(2) The marketing plan for the vacation club;

(3) Proof of ownership or a leasehold estate of the time-share intervals that are part of the vacation club; and

(4) Satisfactory proof of compliance with this act, including, but not limited to, a public offering statement, escrow of deposits, cancellation rights, advertising and promotional offers.

SECTION 10. This act shall take effect on January 1, 1996, the public welfare requiring it.